

Editor's note: Reconsideration granted; reaffirmed as modified -- See 93 IBLA 113 (July 24, 1986)

SANDRA MEMMOTT

IBLA 84-888

Decided September 27, 1985

Appeal from a determination by the Utah State Office, Bureau of Land Management, denying appellant's request that it declare mining claims abandoned and void. UMC 58767 through UMC 58774.

Dismissed.

1. Contests and Protests: Generally -- Mining Claims: Abandonment -- Mining Claims: Contests -- Mining Claims: Recordation -- Rules of Practice: Private Contests

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim because of a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Harold C. Verhaasen, Salt Lake City, Utah, for appellant; Dexter L. Anderson, Fillmore, Utah, for Red Dome, Inc. (intervenor).

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The appeal now before this Board appears to be one chapter in a lengthy, ongoing and acrimonious dispute between rival mining claimants. On July 23, 1984, counsel for appellant filed a request that the Utah State Office, Bureau of Land Management "issue its decision declaring the Red Dome Mining claims null and void, or that said claims have been abandoned." On August 21, 1984, the Utah State Office responded to the request. In its response BLM stated "your request that we declare the Red Dome mining claims invalid for noncompliance with the Federal Land Policy and Management Act of 1976 is denied." An appeal from this response was filed on September 12, 1984.

Because this appeal addressed questions regarding interpretation of the mining claim recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), this case was suspended pending a decision by the United States Supreme Court in United States v. Locke. On April 1, 1985, the Supreme Court rendered an opinion (United States v. Locke, 105 S. Ct. 1785 (1985)), and this case was assigned for consideration.

When Congress enacted FLPMA it placed certain filing requirements on mining claim owners, including the requirement to file location notices and the yearly requirement to file a notice of intent to hold the claim, a copy of the affidavit of annual assessment work performed, or a detailed report provided by 30 U.S.C. § 28-1 (1982). See 43 U.S.C. § 1744(a) and (b) (1982). Congress further provided that failure to file such instruments shall be deemed conclusively to constitute an abandonment of the mining claim. See 43 U.S.C. § 1744(c) (1982).

The presumed abandonment of a mining claim for failure to file a requisite document can be determined from the BLM records. If this were a contest, rather than an appeal from a BLM decision, it would be expressly precluded by the requirements of the Departmental regulation concerning private contests, 43 CFR 4.450-1. Under that regulation a person may initiate a contest to have "the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management." Because compliance with section 314 of FLPMA can only be resolved by the records of BLM, no private contest based on that issue can be maintained under that regulation. While the requirement limiting private contests to matters not of record was initially provided to prevent rival homestead entrymen from claiming a preference right based on information already available to the Government, 1/ it applies to all similar contests. IMCO Services, 73 IBLA 374 (1983). This is appropriate because a contest proceeding consists of a formal evidentiary hearing. No such hearing is required where the claim is void as a matter of law and its invalidity can be determined on the basis of a record without a hearing. Gold Depository and Loan Co. v. Mary Brock, 69 IBLA 194 (1982). The Department is without authority to determine the question of right of possession to claims between rival claimants. A suit filed in a court of competent jurisdiction is the proper method of resolving such disputes. Gold Depository and Loan Co., supra at 196; W. W. Allstead, 58 IBLA 46 (1981); John R. Meadows, 43 IBLA 35 (1979). Appellant herein has requested a ruling from BLM that a rival claimant's claims are abandoned and void. 2/ Notwithstanding the reasons given for its refusal to do so, BLM properly rejected this request. A decision by BLM that a rival claimant's claim is abandoned and void will not quiet title to appellant's claims. The proper forum for doing so is the courts.

We are sure appellant finds this determination to be troubling in light of recent decisions by this Board affirming BLM findings that certain claims not subject to this appeal were conclusively deemed to be abandoned and void. There is, however, an important distinction between periodic review of records to ascertain, for BLM's own purposes, the standing of missing claim recordation documents and acting as arbiter in private disputes. The stated purpose for the mining claim recordation provision of FLPMA was to provide a means by which Federal land managers could ascertain which Federal lands were subject to mining claims, and a method of purging the record of stale locations. Since the enactment of FLPMA, many of the claimants who have lost their claims because of a failure to file in a timely manner have argued that

1/ See generally Christie v. O'Glesbee, 23 IBLA 155 (1973).

2/ The claims owned by appellant and respondent were the subject of litigation in the District Court for Millard County, State of Utah, Civil No. 6656.

enforcement of the recordation provisions of FLPMA has resulted in a conclusive determination that claims are abandoned, even though it was the clear intent of the claimant to maintain the claim. As noted in United States v. Locke, *supra*, the method of removing stale claims imposed by Congress was to establish a filing requirement with forfeiture as the penalty for failing to comply. If in the course of maintaining comprehensive and up-to-date information on the status of recorded but unpatented mining claims BLM determines, for its own purpose, that a claimant has failed to comply with the statute, BLM may notify the claimant of its determination that the claim is conclusively abandoned and void, and the claimant has the right to appeal from that determination. We do not, however, deem it appropriate to require BLM to make a determination as to the standing of a mining claim at the insistence of a rival claimant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

